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**September 4, 2014**

Kenny Wheeler  
Atlas Construction Supply  
4640 Brinell Street  
San Diego, CA 92111

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter  
Atlas Construction Supply Violations of General Industrial Permit**

Dear Mr. Wheeler:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Atlas Construction Supply's violations of the State Water Resources Control Board Water Quality Order No. 97-03-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit). This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for Atlas Construction Supply (Facility), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of Atlas Construction Supply's Clean Water Act violations and CERF's intent to sue.

**I. Coastal Environmental Rights Foundation (CERF)**

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from Atlas Construction Supply's ongoing illegal activities are discharged into Mission Bay. The public and members of CERF use Mission Bay to fish, sail, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by Atlas Construction Supply affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by Atlas

Construction Supply Owners and/or Operators' failure to comply with the Clean Water Act and the General Industrial Permit.

**II. Storm Water Pollution and the General Industrial Permit**

**A. Duty to Comply**

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the General Industrial Permit in order to lawfully discharge. Atlas Construction Supply enrolled as a discharger subject to the General Industrial Permit on April 23, 2013 for its facility at 4640 Brinell Street in San Diego, California.

Pursuant to Section C(1) of the General Industrial Permit, a facility operator must comply with all conditions of the General Industrial Permit. Failure to comply with the General Industrial Permit is a Clean Water Act violation. (General Industrial Permit, § C.1). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) General Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of a General Industrial Permit renewal application. As an enrollee, Atlas Construction Supply has a duty to comply with the General Industrial Permit and is subject to all of the provisions therein.

**B. Failure to File An Annual Report**

Section B(14) requires that all facility operators submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located. The Annual Report must include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports, the annual comprehensive site compliance evaluation report, an explanation of why a facility did not implement any activities required, and records specified in Section B(13) and B(14) of the General Industrial Permit. The Annual Report is necessary in order to assess the facility's compliance and prevent excess discharges from the facility into receiving waters (Mission Bay).

Atlas Construction Supply is in violation of section B(14) of the General Industrial Permit for failing to submit an annual report for the 2012-2013 and 2013-2014 years.

Every day the Atlas Construction Supply Owners and/or Operators operate the Facility without reporting, as required by the General Industrial Permit, is a separate and distinct violation of the General Industrial Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Atlas Construction Supply Owners and/or Operators have been in daily and continuous violation of the General Industrial Permit's reporting requirements every day they fail to submit reports to the Regional Board – for a total of more than 360 days. The Atlas Construction Supply Owners and/or Operators are subject to penalties for all violations of the General Industrial Permit and the Clean Water Act occurring since they

failed to submit an annual report for the 2012-2013 and 2013-2014 years. Thus, the Atlas Construction Supply Owners and/or Operators are liable for civil penalties and violations of the reporting requirements of the General Industrial Permit and the Clean Water Act, punishable by a minimum of \$37,500 per day of violation. (33 U.S.C. §1319(d); 40 CFR 19.4).

**C. Failure to Monitor**

The Atlas Construction Supply Owners and/or Operators have further failed to sample as required for the 2012-2013 and 2013-2014 years. Sections B(5) and (7) of the General Industrial Permit require dischargers to visually observe and collect samples of storm water discharged from all locations where storm water is discharged. Facility operators, including Atlas Construction Supply Owners and/or Operators, are required to collect samples from at least two qualifying storm events each wet season, including one set of samples during the first storm event of the wet season. Required samples must be collected by Facility operators from all discharge points and during the first hour of the storm water discharge from the Facility. Sampling of stored or contained storm water shall occur any time the stored or contained storm water is released. Atlas Construction Supply Owners and/or Operators have failed to meet these monitoring requirements for the 2012-2013 and 2013-2014 periods and are thus subject to penalties in accordance with the General Industrial Permit – punishable by a minimum of \$37,500 per day of violation. (33 U.S.C. §1319(d); 40 CFR 19.4).

**D. Inadequate Storm Water Pollution Prevention Plan**

One of the main requirements for the General Industrial Permit is the Storm Water Pollution Prevention Plan (SWPPP). (General Industrial Permit §A). Atlas Construction Supply's has not developed a SWPPP as required by the General Permit.

The SWPPP has two major objectives: (1) to help identify the sources of pollution that affect the quality of industrial storm water discharges and authorized non-storm water discharges, and (2) to describe and ensure the implementation of BMPs to reduce or prevent pollutants in industrial storm water discharges and authorized non-storm water discharges. (General Industrial Permit, Fact Sheet, p. IX).

Every day the Atlas Construction Supply Owners and/or Operators operate the Facility without a SWPPP, there is a separate and distinct violation of the General Industrial Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Atlas Construction Supply Owners and/or Operators have been in daily and continuous violation of the General Industrial Permit for not submitting a SWPPP since enrollment on April 23, 2013. These violations are ongoing and the Atlas Construction Supply and/or Operators will continue to be in violation every day they fail provide a SWPPP for the Facility. Thus, the Atlas Construction Supply and/or Operators are liable for civil penalties of up to \$37,500 per day of violation for 435 violations of the General Industrial Permit and the Clean Water Act.

### **III. Remedies**

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

CERF's action will seek all remedies available under the Clean Water Act § 1365(a)(d). CERF will seek to enjoin the illegal discharges unless Atlas Construction Supply submits its annual report as mandated by the Clean Water Act. CERF will also seek the maximum penalty available under the law which is \$37,500 per day for failure to submit the 2012-2013 and 2013-2014 Annual Reports.

Atlas Construction Supply must develop and implement a SWPPP and submit its annual report for the 2012-2013 and 2013-2014 years, consistent with the sampling and monitoring of storm water discharges required in the General Industrial Permit. Should Atlas Construction Supply Owners and/or Operators fail to do so, CERF will file an action against Atlas Construction Supply for its prior, current, and anticipated violations of the Clean Water Act.

CERF may further seek a court order to prevent Atlas Construction Supply from discharging pollutants. A strong or substantial likelihood of success on the merits of CERF's claim exists, and irreparable injuries to the public, public trust resources, and the environments will result if Atlas Construction Supply further discharges pollutants into Mission Bay. The cessation of Atlas Construction Supply discharge will not cause substantial harm to others, and the public interest would be served in preventing discharge of pollutants into receiving waters.

Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

### **IV. Conclusion**

CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

**Marco A. Gonzalez**  
**COAST LAW GROUP LLP**  
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CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

**COAST LAW GROUP LLP**

  
**Marco A. Gonzalez**



**Livia Borak**  
Attorneys for  
Coastal Environmental Rights Foundation

CC:

<b>Jared Blumenfeld, Region 9 Administrator</b> <b>Alexis Strauss, Deputy Regional Administrator</b> <b>U.S. EPA, Region 9</b> <b>75 Hawthorne Street</b> <b>San Francisco, CA, 94105</b>	<b>Dave Gibson, Executive Officer</b> <b>Catherine Hagan, Staff Counsel</b> <b>San Diego Regional Water Quality Control Board</b> <b>9174 Sky Park Court, Suite 100</b> <b>San Diego, CA. 92123-4340</b>
<b>Gina McCarthy</b> <b>EPA Administrator</b> <b>Mail Code 4101M</b> <b>USEP A Ariel Rios Building (AR)</b> <b>1200 Pennsylvania Avenue N.W.</b> <b>Washington, DC 20004</b>	<b>Thomas Howard</b> <b>Executive Director</b> <b>State Water Resources Control Board</b> <b>P.O. Box 100</b> <b>Sacramento, CA 95812-0110</b>